



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TJR

Docket No: 3380-00

1 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 24 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Marine Corps on 28 March 1975 at the age of 17. Your record reflects that on 20 May 1975 you received nonjudicial punishment (NJP) for falsifying a official document and were awarded a \$50 forfeiture of pay and correctional custody for seven days.

On 6 December 1976 you were convicted by special court-martial (SPCM) of two periods of unauthorized absence (UA) totalling 170 days. You were sentenced to hard labor and restriction for 60 days and a \$300 forfeiture of pay.

Your record further reflects that on 17 July 1977 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for a 126 day period of UA. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a

result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 18 July 1977 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity. However, the Board found the evidence and materials submitted were not sufficient to warrant a change in the recharacterization of your discharge given your frequent and lengthy periods of UA and your request for discharge to avoid trial for the same. The Board believed that considerable clemency was extended to you when your request for an undesirable discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board concluded that you received the benefit of your bargain with the Marine Corps when your request for a clemency discharge was granted and should not be permitted to change your discharge now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director